IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 604 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

K L GAJJAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 604 of 1989

MR MR ANAND for Petitioner No. 1

MR PRADIP BHATE A.G.P. for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 18/08/2004

ORAL JUDGEMENT

1.0. The petitioner by way of this petition has challenged the order of the Sate Government dated 28th July, 1987 whereby the State Government has not

regularized the suspension period of the petitioner from 27th December to 1st March, 1987. The petitioner has further prayed to grant the benefit of deemed date of promotion on the post of Assistant accountant in the payscale of Rs.425-800 (prerevised) w.e.f. 30th April, 1983, which was granted by the Gujarat Civil Service Tribunal vide order dated 12th July, 1988.

2.0. The short facts of the case are that the petitioner was appointed in the cadre of Clerk in the year 1975 and thereafter was promoted to the post of Deputy Accountant in the year 1981. It is the case of the petitioner that from 1980 onwards, he has been working in the Ministry Department of Roads & Buildings on deputation. The petitioner further submitted that vide order dated 27th December, 1982, at Annexure-A to the petition, he was placed under suspension on the ground of some irregularity in the matter of examination, though he was not at all concerned in the matter.

2.1. The petitioner further submitted that, after suspension, two criminal case were registered against him, namely Criminal case nos. 557 of 1983 and 558 of 1983, on the allegations of committing irregularity in the examination and for destructing the concerned papers. The petitioner further submitted that since the charges against him were not proved, he was acquitted in both the criminal cases. The petitioner further submitted that being inspite of acquittal in the criminal proceedings, departmental inquiry was held against him, wherein also the charges levelled against him were not proved and ultimately, he was reinstated in service vide order dated 24th February, 1987.

2.2. It is the say of the petitioner that though he was acquitted from the prosecution and departmental inquiry, his request to grant him promotion to the higher post of Assistant Accountant w.e.f. 30th April, 1983, i.e. the date on which his junior was given the promotion to the higher post, was denied. The petitioner further submitted that though no order was passed with regard to treatment of the suspension period, he was not paid suspension allowance as per Rule 152 of B.C.S.R. The petitioner further submitted that though he had made several representations in his behalf, he was not given his legal dues. The petitioner further submitted that vide order dated 28th July, 1987 respondent no. 2 rejected the request of the petitioner to regularize the suspension period between 27th December, 1982 to 1st March, 1987.

2.3. Being aggrieved by the order dated 28th July, 1987, the petitioner approached the Gujarat Services Tribunal, [hereinafter referred to as "the Tribunal"], Gandhinagar, by filing Appeal No. 378 of 1987. The Tribunal allowed the appeal and directed to grant the benefit of deemed date of promotion to the higher post of Assistant Accountant in the payscale of 425-800/- with effect from 30th April, 1983.

2.4. The petitioner further submitted that he had approached the Tribunal by filing appeal no. 379 of 1987 for payment of salary for the suspension period, wherein the Tribunal held that since the issue with regard to treatment of suspension period is beyond jurisdiction, the Tribunal could not entertain the appeal and in view of that it was accordingly withdrawn.

2.5. Mr. Raval for Mr. M.R. Anand learned advocate for the petitioner submitted that inspite of the order of the Tribunal at annexure-G, the petitioner has not been given the benefits of deemed date and the consequential benefits of pay fixation and the payment of arrears. Mr. Raval further submitted that though vide order dated 17th August, 1988 the petitioner is promoted to the post of Assistant Accountant, once again he is not given the benefits of deemed date. Mr. Raval submitted that being aggrieved by the orders at annexure-F and annexure-I, the petitioner has no other option, but to approach this Court, by way of this petition.

3.0. I have heard the learned advocates for the respective parties. It is clear that, when the Tribunal has granted the benefits of the deemed date, which was not challenged by the State Government, it is not proper on the part of the State Government to deny such benefits to the petitioner. Further, in my opinion, the order of the State Government dated 28th July, 1987 rejecting the request to regularize the suspension period between 27th December, 1982 to 1st March, 1987 is misconceived inasmuch as the petitioner was not heard as per the instructions contained in the Circular dated 30th March, 1970. Clause-(3) of the said Circular reads as under:-

> (3) When a Government servant who had been dismissed, removed, or suspended, is reinstated in service after he is fully exonerated or after his suspension is found to be wholly unjustified, the period of his absence from duty is required to be treated as period spent on duty and he is required to be given the

> pay and allowance which he would have been entitled to had he not been dismissed, removed or suspended as the case may be, vide B.C.S.R. 152. If such Government Servant happens to be also superseded earlier on account of his being out of service or under suspension then, the benefit of retrospective promotion should be granted to him, his pay on the promotion post should be fixed and the payment of arrears of pay for that period should be regulated on the same lines as stated in sub-para (1) above, subject to the condition that he would have earned promotion during such period, but for his dismissal, removal or suspension (i.e. on the basis of seniority and confidential record). In case of reinstated after suspension of a Government servant being held to be wholly unjustified, the normal date of increment should, however, honourably exonerated from all charges. Payment of arrears of pay/allowance to such Government servant under B.C.S.R. 152 should also be subject to the instruction under that rule. Protection from financial loss involved in deferred promotions should also be similarly be given to a Government servant who has been fully exonerated in a departmental enquiry during which he continued to be in active service."

3.1. Thus, from the aforesaid clause, it is clear that the petitioner should have been treated as continued in service for all periods. Therefore, order at annexure-F to the petition is required to be quashed and set aside and it will be just and proper to direct the respondents to regularize the period from 27th December, 1982 to 1st March, 1987 and pay all consequential benefits to the petitioner as well as the benefit of deemed date to the petitioner.

4.0. In the result, the petition is partly allowed. The order dated 28th July, 1987 at annexure-F is quashed and set aside. The respondents are directed to regularize the period of suspension between 27th December, 1982 and 1st March, 1987 and to pay all consequential benefits flowing therefrom. The petitioner shall also be given the benefit of deemed date as per

order dated 17th August, 1988 at annexure-I to the petition. It is clarified that while giving effect of deemed date, the respondents shall grant the benefit of deemed date as per order of the Tribunal dated 12th July, 1988 in the payscale of 425-800 (unrevised) w.e.f. 30th April, 1983. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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